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BRUNSWICK ELECTRIC MEMBERSHIP CORPORATION

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July 22, 1994

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M. Street, N.W., Room 814
Washington, DC 20554

RE: Cable Competition Report
CS Docket No. 94-48

Dear Chairman Hundt:

I strongly support Comments filed by the National Rural Telecommunications Cooperative (NRTC) in the matter of Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 94-48.

As a rural electric member of NRTC, Brunswick Electric Membership Corporation is directly involved in the distribution of C-band satellite television programming to 238 rural consumers in North Carolina.

Currently, Brunswick Electric is forced to pay significantly more for access to popular cable and broadcast programming than comparable sized cable companies in our area. The fact that we are forced to pay inflated rates for program access means we must in turn charge consumers more for our service, a fact which has already had a detrimental effect on our ability to compete in our local marketplace.

Many of the consumers we serve live in remote areas not served by cable and off-air television. Since these consumers have not other choice for multichannel television programming other than satellite, they are forced to pay higher rates for access to television than their counterparts with access to cable.

It was my impression that, in the 1992 Cable Act, Congress had mandated that all distributors (cable, satellite and otherwise) should be granted equal access to cable and broadcast programming services at non-discriminatory rates. If this is the case, why are we still paying more for many programming services than comparably sized cable companies?

While it is true that some programmers have lowered their rates since the implementation of the 1992 Cable Act, we must have fair and equal access to all programming at rates comparable to those paid by cable or we will be unable to offer satellite television at prices acceptable to rural consumers.

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In that regard, Brunswick Electric joins NRTC in calling on the FCC to monitor and combat the problems that I have mentioned above and to ensure that the intentions of Congress are being upheld with regard to the 1992 Cable Act.

Specifically, I feel that the FCC must prohibit abuses of the program access provisions of the 1992 Cable Act by rule and make it clear that damages will be awarded for program access violations.

I thank you for your attention on this matter.

Sincerely,

David J. Batten

David J. Batten
EVP & General Manager

cc: The Hon. Jesse Helms
The Hon. Charles Rose
Mr. William Caton
The Hon. James Quello
The Hon. Rachelle B. Chong
The Hon. Andrew Barrett
The Hon. Susan Ness

BILLY TAUZIN
[illegible] DISTRICT, LOUISIANA

[illegible] COMMITTEE
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June 15, 1994

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Chairman Hundt:

We are writing to ask your help in strengthening the Commission's rulemaking on competition and diversity in video programming distribution.

During the past year a great deal of the energy has necessarily been devoted to the issue of cable rate regulation. Notwithstanding the immediate importance of that issue, many Members of Congress believe that the true answer to improving the video programming distribution marketplace is the promotion of real competition. In the long run we believe that competition -- not regulation -- will achieve the greatest benefits for consumers and result in greater vitality in the industry. Of the many provisions of the Cable Act that are designed to promote competition, none are more important than Section 19, which instructs the Commission to ensure nondiscriminatory access to cable programming by all distributors.

We strongly believe that section 19 is worthy of your serious and immediate attention. We respectfully request that you reexamine the Commission's First Report and Order implementing section 19 in order to eliminate potential loopholes that would permit the denial of programming to any non-cable distributor.

We wish to call to your attention certain disquieting developments heightening our concern about the FCC's program access regulations. We are troubled by the Primestar consent decrees and the effect they may have on program access. We believe the FCC's program access regulations need to be tightened if the full force and effect of Section 19 of the 1992 Cable Act is to be preserved.

As you may be aware, despite the Commission's well-reasoned brief opposing the entry of the state Primestar decree, the court entered final judgment. Among other things, the state consent decree will permit the vertically integrated cable programmers that own Primestar to enter into exclusive contracts with one direct broadcast satellite (DBS) operator to the exclusion of all other DBS providers at each orbital position. On the other hand, Primestar's ability to obtain all of the programming of its cable owners will be unimpeded by the state consent decree. In its opinion, the court made clear, however, that its ruling was in no way a judgment about the propriety of such exclusive contracts under Section 19 of the Cable Act or the FCC's implementing regulations and specifically left that question open to be decided by the FCC.

In essence, the state consent decree gives Primestar's cable owners the ability to carve up the DBS market to the competitive disadvantage of non-cable owned DBS providers. This is directly contrary to the intent of Congress. In enacting the program access provisions, Congress specifically rejected the existing market structure in which vertically integrated cable companies controlled the distribution of programming. Congress and the FCC recognized that vertically integrated programmers had both the means and the incentives to use their control over program access to discriminate against cables' competitors and to choke off potential competition, even in unserved areas. Moreover, Congress looked to DBS as a primary source of competition to cable, not as a new technology to be captured by the cable industry.

Congress enacted very strong program access provisions and gave the Commission broad authority to regulate against anti-competitive and abusive practices by vertically integrated programmers. Section 628 (b) makes it unlawful for a cable operator or vertically integrated cable programmer "to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor" from providing cable or superstation programming to consumers. Section 628 (c) provides the Commission with the authority to promulgate regulations to effectuate the statutory prohibition and delineates their minimum content.

Upon examination of the program access regulations, we have discovered a critical loophole that seems ripe for exploitation by the cable industry and is directly applicable to exclusive contracts between vertically integrated cable programmers and DBS providers. Section 628 (c) (2) (c) of the 1992 Cable Act contains a broad per se prohibition on "practices, understandings, arrangements, and activities, including exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable programming vendor or satellite broadcast programming vendor, that prevent a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a cable operator has an attributable interest" for distribution in non-cabled areas. However, Section 76.1002 (c) (1) of the Commission's new rules covers only those exclusionary practices involving cable operators.

The Commission's rule in its present form is inconsistent with both the plain language of the statute and Congressional intent. The prohibition against all exclusionary practices by vertically integrated programmers in unserved areas is clear. While it certainly includes exclusive contracts between cable operators and vertically integrated programmers, the language of the statute does not limit the prohibition to that one example. The regulations incorrectly turn the illustrative example into the rule.

This loophole must be closed and the program access regulation strengthened on Reconsideration. The Primestar consent decree alone makes it clear that the bare minimum regulation of exclusive contracts is insufficient to guard against anti-competitive practices by vertically integrated cable programmers. The Commission's final regulations should provide, as does the legislation, that all exclusive practices, understandings, arrangements and activities, including (but not limited to) exclusive contracts between vertically integrated video programmers and any multichannel video programming distributor are per se unlawful in non cabled areas. In cabled areas, all such exclusive contracts should be subject to a public interest test with advanced approval required from the Commission.

There is one other vital point to note regarding the Commission's program access rules. It has become evident that the cable industry has been attempting to manipulate the Commission's reconsideration proceeding to obtain an overly broad Commission declaration as to the general propriety of exclusive contracts with non-cable multichannel video programming distributors. Any such pronouncement by the Commission would eviscerate the program access protections of the 1992 Cable Act.

Specifically, in addition to and independent of the explicit exclusive contracting limitations imposed by the Act, exclusive arrangements between vertically integrated programmers and non-cable multichannel video programming distributors (MVPD) in many circumstances also violate Section 628(b)'s general prohibition of "unfair practices" which hinder significantly or prevent any MVPD from obtaining access to cable programming. In addition, they may violate Section 628 (c)(2)(B)'s prohibition against discrimination by a vertically integrated satellite cable programming vendor in the prices, terms and conditions of sale or delivery of satellite cable programming "among or between cable systems, cable operators, or other multichannel video programming distributors." Accordingly, we urge the Commission to be extremely careful in its decision on reconsideration to avoid any ruling or language which could, in any way, limit the protections against discrimination afforded by Sections 628(b) and (c)(2)(B).

Lastly, Mr. Chairman, it is absolutely essential in overview that the Commission add regulatory "teeth" to its Program Access regulations. In the Program Access decision, the Commission generally declined to award damages as a result of a Program Access violation. Without the threat of damages, however, we see very little incentive for a programmer to comply with the rules. Nor is it practical to expect an aggrieved multichannel video programming distributor to incur the expense and inconvenience of prosecuting a complaint at the Commission without an expectation of an award of damages. There is ample statutory authority for the Commission to order "appropriate remedies" for program access violations, and we urge the Commission to use such authority to impose damages (including attorney fees) in appropriate cases. [See, 47 U.S.C. 548 (e) (i)].

DBS has long been viewed as a strong potential competitor to cable if it were able to obtain programming. In the 1992 Cable Act, Congress acted definitively to remove that barrier to full and fair DBS entry into the multichannel video programming distribution market. We think it is of the utmost importance that there be no loopholes which would allow cable or, in light of recent merger activity, cable-telco combinations to dominate the DBS marketplace.

Thank you for your consideration.

Sincerely,

cc: The Hon. James H. Quello
The Hon. Andrew C. Barrett
The Hon. Susan Ness
The Hon. Rachelle B. Chong

RICK BOUCHER
Member of Congress

BILLY TAUZIN
Member of Congress

RON WYDEN
Member of Congress

JIM COOPER
Member of Congress

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BLANCHE LAMBERT
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July 22, 1994

The Honorable Senator Jesse Helms
United States Senate
403 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Helms:

I strongly support the implementation and enforcement of Section 19 of the 1992 Cable Act by the Federal Communications Commission.

As a distributor of DBS/C-band satellite television programming, equal access to cable and broad cast programming at fair rates – something which we are not currently receiving – is essential for Brunswick Electric Membership Corporation to be competitive in our local marketplace.

The attached letters to FCC Chairman Reed Hundt from myself, in addition to Rep. Billy Tauzin and other members of Congress, spell out my concerns on this issue.

It was my impression that Congress had guaranteed equal access to cable and broadcast programming for all distributors with the passage of the 1992 Cable Act. Despite this fact, however, satellite distributors and consumers continue to be treated unfairly by the cable industry.

Some programmers continue to charge unfairly high rates for satellite distributors compared with cable rates. Other programmers – like Time Warner and Viacom – have simply refused to sell programming to some distributors. These exclusive practices hurt rural consumers and thwart the effective competition required by Section 19 of the Cable Act.

I would greatly appreciate your assistance on behalf of rural consumers in North Carolina in encouraging the FCC to correct this inequity.

Sincerely,

David J. Batten

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EVP & General Manager

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July 22, 1994

The Honorable Representative Charles Rose
United States House of Representatives
2230 Rayburn House Office Building
Washington, DC 20515-3307

Dear Representative Rose:

I strongly support the implementation and enforcement of Section 19 of the 1992 Cable Act by the Federal Communications Commission.

As a distributor of DBS/C-band satellite television programming, equal access to cable and broad cast programming at fair rates – something which we are not currently receiving – is essential for Brunswick Electric Membership Corporation to be competitive in our local marketplace.

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